

Message Text

CONFIDENTIAL

PAGE 01 JAKART 07916 280832Z

12
ACTION EA-09

INFO OCT-01 ISO-00 EB-07 SS-15 SP-02 L-03 INR-07 /044 W
----- 041486
P 160000Z JUN 76
FM AMEMBASSY JAKARTA
TO SECSTATE WASHDC IRIORITY 5063

C O N F I D E N T I A L JAKARTA 7916

STADIS//////////

EA/IMS PLEASE PASS AMBASSADOR NEWSOM

EO 11652: GDS
TAGS: ENRG ID
SUBJECT: IRS RULING ON PRODUCTION SHARING CONTRACTS

REF: STATE 141769

1. MESSRS. GRANT AND FISHER OF ROGERS AND WELLS COMPLETED MEETINGS WITH GOI MONDAY, JUNE 14, AND DEPARTED SAME DAY FOR NEW YORK. TEAM HELD SEVERAL MEETINGS WITH GOI OFFICIALS CHAIRED ALTERNATELY BY MINTRADE RADIUS (BY WHOM ROGERS AND WELLS HAD BEEN RETAINED) AND MINESMIN SADLI.

2. ACCORDING TO MIGAS SOURCES, GRANT AND FISHER PROPOSED TWO CHANGES IN LANGUAGE AND MECHANICS OF PRODUCTION-SHARING ARRANGEMENTS. FIRST CHANGE INVOLVES STATEMENT THAT OIL COMPANY PAYMENTS WOULD BE MADE DIRECTLY TO MINISTRY OF FINANCE, SPECIFICALLY DIRECTORATE OF TAXATION. IN THIS REGARD, GOI REFERRED TO LITTLE-NOTICED REGULATION (12/1975) ISSUED AT HIEGHT OF PERTAMINA CRISIS IN DECEMBER 1975 WHICH INSTRUCTS COMPANIES TO PAY DIRECTLY TO MINFIN. SECOND MODIFICATION CONCERNS TEMPORARY TRANSFER OF TAX OIL FROM GOI TO COMPANIES AT POINT OF EXPORT. FOLLOWING NUMVERICAL EXAMPLE BASED ON HYPOTHETICAL PRIDUCTION OF 100 BARRELS GIVEN TO EMBOFF AS ILLUSTRATION: UNDER CURRENT RPT CURRENT SYSTEM, 40 BARRELS DEDUCTED AS
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 JAKART 07916 280832Z

COST OIL LEAVING 60 BARRESL TO BE SPLIT AS "OPERATING

INCOME." SIXTY-FIVE PERCENT OF THIS (39 BARRELS) THEN BECOMES GOVERNMENT'S SHARE; THIS BREAKS DOWN AS 26 BARRELS-CORPORATE TAX, 10 BARRELS-OTHER TAX, AND 3 BARRELS-RETAINED BY PERTAMINA (BASED ON 5 PERCENT OF 60). REMAINING 21 BARRELS, IN THIS HYPOTHETICAL CASE, IS COMPANY'S "TAKE HOME" OIL; HENCE, CORPORATE TAX PAYMENT IS INCLUDED AS PART OF GOI'S SHARE WHICH IS CRUX OF RESENT PROBLEM.

3. UNDER NEW PROPOSAL, TAX OIL WOULD BE TAKEN OUT AND PAID AT POINT OF EXPORT BY COMPANY TO MINISTRY OF FINANCE. THUS, USING SAME HYPOTHETICAL CASE, 13 BARRELS (10 FOR OTHER TAX AND 3 RETAINED BY PERTAMINA) WOULD BE FIRST DEDUCTED FROM TOTAL, LEAVING 87 BARRELS OF WHICH TITLE "TEMPORARILY" PASSES TO COMPANY AT POINT OF EXPORT. THIS FUTURE COMPOSED OF 40 BARRELS (COST OIL), 26 BARRELS (CORPORATE TAX), AND 21 BARRELS (COMPANY'S "TAKE HOME" INCOME). CORPORATE TAX THEN PAID BACK TO GOI BY COMPANY AT POINT OF EXPORT. HENCE IN THIS MODEL, PAYMENT OF TAX MADE AT TIME WHEN COMPANY HAS "ECONOMIC INTEREST" OR TITLE TO OIL.

4. LAWYERS ALSO LEFT COPY OF SAMPLE PRODUCTION-SHARING CONTRACT WITH MINESMIN SADLI FOR REVIEW AND/OR CHANGES. GOI WILL CABLE TEXT OF AGREED UPON LANGUAGE TO RODGERS AND WELLS END OF THIS WEEK OR EARLY NEXT WEEK FOLLOWING SERIES OF INTER-DEPARTMENTAL MEETINGS. COMMENT: ONE OF THE PROBLEMS WHICH CAME OUT OF MEETINGS WAS AMBIGUITY OF PREVIOUS ENGLISH-INDONESIAN TRANSLATION OF CERTAIN TERM. END COMMENT. MIGAS IS CHECKING ITS CALCULATIONS WITH PRICE-WATERHOUSE ADVISORS RE COST RECOVERY PORTION. ASSUMPTION APPEARS TO BE THAT 40 PERCENT COST RECOVERY CEILING WILL BE REPLACED WITH GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, I.E., CAPITALIZATION AND DEPRICIATION SCHEDULES.

5. GAME PLAN NOW CALLS FOR NEW SET OF FACTS BEING PRESENTED TO IRS FOR RULING AS SOON AS POSSIBLE. MOBIL'S SENIOR TAX COUNSEL, MIKE AMBLER, WHO SAT IN WITH GOI/RODGERS AND WELLS AT LAST SESSION MONDAY AND WHO IS FULLY BRIEFED ON SITUATION, TOLD EMBOFF MOBIL WOULD BE WILLING GO CONFIDENTIAL

CONFIDENTIAL

PAGE 03 JAKART 07916 280832Z

BEFORE IRS AS TEST CASE.

6. COMMENT: THERE APPEARED TO BE GENERAL RELIEF ON GOI SIDE THAT CHANGES PROPOSED BY LAWYERS WOULD NOT REQUIRE "MAJOR SURGERY", I.E. PARLIAMENTARY APPROVAL. VIEW IS

THAT CONTRACTS CAN BE REVISED WITH SOME RATHER STRAIGHTFORWARD CHANGES IN LANGUAGE SO AS TO MEET IRS

CONDITIONS. WHILE UNDERSTANDABLY RELUCTANT TO GIVE 100
PERCENT GUARANTEE, GRANT AND FISHER APPEARED REASONABLY
SATISFIED THAT THESE CHANGES WOULD WORK.
END COMMENT RIVES

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PETROLEUM INDUSTRY, NEGOTIATIONS, CENTRAL GOVERNMENT, MULTINATIONAL CORPORATIONS, PROFIT SHARING, TAXES
Control Number: n/a
Copy: SINGLE
Draft Date: 16 JUN 1976
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976JAKART07916
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760291-0539
From: JAKARTA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760653/aaaabttt.tel
Line Count: 119
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: STADIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: STADIS
Reference: 76 STATE 141769
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 24 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <24 MAY 2004 by greeneet>; APPROVED <25 MAY 2004 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: IRS RULING ON PRODUCTION SHARING CONTRACTS
TAGS: ENRG, ID
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006